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JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the Circuit Court of Stone County dissolving the parties' marriage, dividing the parties' property and debts, and providing for custody and visitation of the parties' daughter.

The questions on appeal involve the jurisdiction of visiting Judge Daniel M. Czamanske to hear and determine the case and, alternatively, whether the judgment satisfies the requirement of § 452.375.6 that the court detail "the specific relevant factors that made a particular arrangement in the best interest of the child." This Court transferred Judge Czamanske to Stone County, specifying that his powers and responsibilities "shall be confined to designated matters and cases." It did not designate or assign him to hear this case. Nor did the presiding circuit judge assign this case to him. He ruled for Mother on the only contested issue—whose residence would be the child's for educational purposes—but made no findings of fact under § 452.375.6.

The trial court entered the judgment on October 17,

2003.[1] Father filed timely motions to set aside the judgment, to reconsider, and for new trial on November 13, 2003.[2] The court overruled the motions on January 15, 2004.[3] Father filed a timely notice of appeal to the Missouri Court of Appeals, Southern District, on January 23, 2004.[4]

The Court of Appeals affirmed. By a 2-1 vote, it held that Judge Czamanske had jurisdiction because he heard the case in the *circuit* to which he was assigned. All three judges also found the issue waived. By a 2-1 vote, the Southern District also held findings of fact unnecessary under § 452.375.6 because the parties disagreed only on the details of the parenting plan, not on joint custody itself.

Following the Court of Appeals' denial of Father's motion for rehearing and alternative application for

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[1] L.F. 44.

[2] L.F. 65.

[3] L.F. 6.

[4] L.F. 68.

transfer,[5] this Court ordered the case transferred upon Father's application.[6]

[5]Buchanan v. Buchanan, No. SD26049 (Mo. App., S.D., Feb. 25, 2005) (order denying motion for rehearing and application for transfer).

[6]Buchanan v. Buchanan, No. SC8662 (Mo. banc Apr. 5, 2005) (order granting transfer).

STATEMENT OF FACTS

This case arises out of a dissolution of marriage. Father filed his petition[7] after Mother left the parties' home in Stone County and moved to Colorado, where her parents and sister live.[8] She took the parties' six-month-old daughter, Kaitlyn, with her.[9] At trial the parties agreed that Mother initially went to Colorado for a two-

[7]L.F. 8-16.

[8]Tr. 12-13, 55.

[9]Tr. 6, 12-13.

week vacation,[10] but they disputed the reason why she refused to return.[11] Mother accepted a deferred prosecution for parental kidnapping.[12]

The issues in this appeal are legal ones. They relate to the jurisdiction of the trial judge to hear and determine the case and, alternatively, whether the judgment satisfies the requirement of § 452.375.6 that the court detail "the specific relevant factors that made a particular arrangement in the best interest of the child." Consequently, Father outlines here only the facts necessary to show the Court the jurisdictional posture of the case and to give the Court an overview of facts of which the

[10]Tr. 12, 38.

[11]Tr. 12-13, 42.

[12]Tr. 15, 20, 54, 58.

trial court made no mention in the judgment. The custody determination can be made afresh, with current evidence, if the judgment is reversed.

A. ***The transfer of Judge Daniel M. Czamanske to Stone County and the lack of designation for him to hear this case.***

Father filed his petition on October 10, 2002.[13] On January 2, 2003, Judge J. Edward Sweeney, the presiding judge of the 39th Judicial Circuit, assigned the case "to Associate Circuit Judge Alan Blankenship to be heard on the record."[14]

Subsequently, on August 1, 2003, this Court temporarily transferred Judge Daniel M. Czamanske, a Platte County associate circuit judge, to the 39th Judicial

[13] L.F. 4, 8.

[14] L.F. 5.

Circuit (Stone County) for the period of September 15-19, 2003.[15] The order stated:

[15]L.F. 42.

It is further ordered that the judge hereby transferred shall have the same powers and responsibilities as a judge of the court or district to which transferred. Such powers and responsibilities shall be confined to designated matters and cases, and shall continue until final disposition of such designated matters including after-trial proceedings.[16]

Ten days later, Judge Blankenship set the case for a half-day hearing.[17] His docket entry stated:

Per counsel conflicts provided, case set for ½ day hearing on Thursday, September 18, 2003, at 9:00 a.m. Case may be heard by visiting judge Daniel M. Czamanske. Clerk to notify counsel.

ALAN BLANKENSHIP, Associate Circuit Judge, Stone County, MO[18]

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[16]L.F. 42.

[17]L.F. 5.

[18]L.F. 5.

Judge Sweeney, the presiding judge, made no docket entry or other order assigning Judge Czamanske to hear the case.[19]

B. *The trial.*

1. Custody was the only contested issue before the court.

[19] *See* L.F. 5.

Judge Czamanske tried the case on September 18, 2003.[20] He asked the parties' attorneys to identify "the controverted issues we're going to be hearing this morning."[21] They told him that the only contested issue is "the residence for the minor child."[22]

2. Evidence before the court on the merits of the custody issue.

Mother is originally from Fort Morgan, Colorado.[23] Mother met Father, who had cousins living in Fort Morgan,[24] while he was living there and working in construction.[25] They dated during the 2½ years they were together in

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[20]Tr. 2.

[21]Tr. 2.

[22]Tr. 2.

[23]Tr. 10.

[24]Tr. 26.

[25]Tr. 25-26.

Colorado before they moved to Missouri in October 2001.[26] Father arranged for a construction job in Missouri before they moved.[27] They lived together at Shell Knob, Missouri, when they were married on March 15, 2002.[28]

[26]Tr. 26-27.

[27]Tr. 27.

[28]Tr. 5, 9-10.

Kaitlyn was born about a week before the parties were married.[29] There was no dispute about paternity.[30] Father is named as the father on Kaitlyn's birth certificate.[31]

After Kaitlyn's birth, the parties moved in with Father's parents so that Mother could have help with the baby while Father was at work.[32] Mother agreed that Father's parents "helped take care of me and Kaitlyn."[33]

As of the time of trial, Mother and Kaitlyn lived with Mother's parents in Fort Morgan, Colorado.[34] They had also lived with Mother's sister there.[35] Mother was working at

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[29]Tr. 5-6.

[30]Tr. 6.

[31]Tr. 6.

[32]Tr. 11.

[33]Tr. 38.

[34]Tr. 35, 43-44, 54-55.

[35]Tr. 55.

a fast food restaurant, Arby's.[36]

[36]Tr. 35-36.

Mother returned to Colorado at time when she was experiencing daily panic attacks[37] and was mentally unstable.[38] The mental problem, she said, runs in her family.[39] She had possibly experienced post-partum depression after Kaitlyn was born[40] and then began having panic attacks severe enough that she called a hotline, went to the emergency room, and ultimately saw a psychiatrist twice.[41] The doctor prescribed Xanax, which helped to alleviate the panic attacks.[42] As of the time of trial, Mother was no longer taking Xanax and could not recall the

[37]Tr. 49.

[38]Tr. 51.

[39]Tr. 51.

[40]Tr. 10.

[41]Tr. 10, 49-50.

[42]Tr. 50.

last time that she had suffered a panic attack.[43] She said that the panic attacks could recur but that she knows "how to control them now."[44]

The marriage broke down over Mother's trip back to Colorado. The parties disputed why.

[43]Tr. 58.

[44]Tr. 59.

Mother said that she and Father agreed that she would return to Colorado on vacation and stay with her parents "to help [her] get over this mental condition."[45] The vacation was to last two weeks.[46] Mother initially planned to meet her parents in Salina, Kansas, but because of her mental condition they came to Missouri to get her instead.[47] She said that while her parents stayed "for a day or two" in Missouri, "things were just odd between me and Justin. Like, he didn't want me to go. He was mad, I thought, that

[45]Tr. 51.

[46]Tr. 12-13, 52.

[47]Tr. 38.

I was leaving. . . . Maybe because I was taking Kaitlyn."[48] She said that he asked her not to take the child but ultimately agreed with her "that it was going to be hard for me to go home and get help without Kaitlyn."[49]

[48]Tr. 39.

[49]Tr. 39.

Mother testified that when she arrived in Colorado, though, Father called her,[50] "being rude" and wanting her "to bring Kaitlyn back right away."[51] Father, she said, "was just like mad, more or less, because I had Kaitlyn, and he didn't think that it was right."[52] He threatened her, she said, with "taking my child away."[53]

Father said that before Mother's parents visited them, the parties had discussed taking a vacation to her parents' home in Colorado.[54] Since Father's work schedule would not allow him to go then, they planned the trip for Thanksgiving.[55] Mother's parents arrived in Missouri the day after Mother was treated and released from the

[50]Tr. 40.

[51]Tr. 40.

[52]Tr. 41.

[53]Tr. 41.

[54]Tr. 28.

[55]Tr. 28.

hospital.[56]

At the end of their visit, Mother announced her intention to return to Colorado for what "was supposed to be a vacation."[57] But, Father said, Mother called him on September 25, 2002, the day after she returned to Colorado, and told him that she wanted to stay there, that she did not plan to come back to Missouri, and that Kaitlyn was going to stay in Colorado with her.[58]

[56]Tr. 27-28.

[57]Tr. 12.

[58]Tr. 12.

Father acknowledged calling Mother on that day as well, one of "quite a few phone conversations that day," and that he "definitely" wanted her to come back to Missouri.[59] Mother similarly acknowledged that Father had called her because he "missed his baby" and "missed [her], and he wanted [her] back, and he wanted [her] to bring the baby back."[60]

Initially Father got to talk to Kaitlyn by phone some in September, but Mother told him that he "didn't need to call out there no more" and that "if something was wrong

[59]Tr. 29.

[60]Tr. 52.

with Kaitlyn, that she would call me and let me know."[61] She gave him no reports, however, and he did not get to see the child.[62] Since Father "felt like [he] had no other choice," he filed the dissolution petition on October 10.[63]

[61]Tr. 13-14.

[62]Tr. 14.

[63]Tr. 13; L.F. 4, 8.

Mother testified that she wanted to come back to Father, that she never told him that she was not coming home, and that at some point she wanted to try to reconcile the marriage.[64] But, she said, she did not return "[b]ecause the conversations that we had on the phone were unbelievable. I couldn't come home to something like that."[65] So, once she "got the divorce papers," Mother started designating Colorado as her residence.[66]

Father did not get to see Kaitlyn during October 2002.[67] Mother said that she did not deny him access to the child.[68] At one point Mother told hm that he could come to Colorado and visit anytime,[69] but she did not offer to meet

[64]Tr. 43.

[65]Tr. 42.

[66]Tr. 53.

[67]Tr. 14.

[68]Tr. 40-41.

[69]Tr. 30.

him to allow him to have visitation.[70] Consequently, in November Father filed a report with the Stone County Sheriff's Department, and subsequently the prosecuting attorney filed a parental kidnapping charge against Mother in Stone County.[71] Father finally was allowed to talk with Kaitlyn by telephone on Thanksgiving Day.[72] But he was not allowed to see her and had no other contact with her in November.[73]

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[70]Tr. 14.

[71]Tr. 14-15.

[72]Tr. 15.

[73]Tr. 15-16.

Mother became aware of the criminal charges and surrendered herself to the sheriff in Fort Morgan, Colorado.[74] She did not return to Missouri to face the charges, though, because her "lawyer took care of that."[75] Mother called Father and told him that he "could have Kaitlyn for Christmas," although she was not returning to Missouri.[76] So Father got Kaitlyn the period of approximately December 19-25.[77] It was the first time that Father had seen Kaitlyn since September 24.[78] But even then, Mother made Father sign for Kaitlyn.[79] Mother was afraid that Father would not return her—both because he had made threats, she said, and because she had not returned

[74]Tr. 16.

[75]Tr. 52.

[76]Tr. 16-17.

[77]Tr. 17.

[78]Tr. 17. *See* Tr. 57.

[79]Tr. 57.

Kaitlyn to him.[80]

[80]Tr. 57.

Mother acknowledged that Kaitlyn's inability to spend time with Father could have been detrimental to her relationship with him.[81] It was not in Kaitlyn's best interest, she said, for her to deprive Father of custody and visitation.[82] In essentially the same breath, she testified that although she did not return to Missouri and did not offer to have her parents bring Kaitlyn to Missouri, she made every effort to allow Father to have visitation.[83]

In the criminal case, Mother agreed to a deferred prosecution on the parental kidnapping charge.[84] She accepted the prosecutor's stipulation that she abide by the divorce court's custody or visitation orders concerning

[81]Tr. 56.

[82]Tr. 56-57.

[83]Tr. 56.

[84]Tr. 54.

Father's rights with Kaitlyn.[85] She made the agreement, she said, "so that the prosecution on this charge would end."[86] For his part, Father did not want the prosecutor to pursue a conviction.[87]

[85]Tr. 54.

[86]Tr. 54.

[87]Tr. 20.

In this case, the parties agreed to a temporary custody order by which they would alternate two-week periods of custody.[88] That, Father testified at trial, had been "going great."[89] Although it involved a lot of travel, he said, Kaitlyn slept and "travel[ed] great."[90] Mother said

[88]Tr. 18.

[89]Tr. 18.

[90]Tr. 18-19.

that "it's okay on Kaitlyn, but it's pretty hard for us."[91]

Mother said that Father is a "good dad"[92] and that he cares for Kaitlyn and exercises his parenting skills well.[93] "Definitely," she said, he could take care of her.[94]

[91]Tr. 36.

[92]Tr. 43.

[93]Tr. 56.

[94]Tr. 59.

At the trial on the merits, the parties agreed on splitting parenting time equally until Kaitlyn reaches school age.[95] But once she reaches school age, both Father[96] and Mother[97] want her to reside with them and attend school where they live. Father testified that he believed it to be in Kaitlyn's best interest to attend school in Missouri.[98] Mother thought it in Kaitlyn's best interest to be placed with her for school purposes.[99] She said that if she were "named the parent as far as residence and school," she intended "to relocate Kaitlyn to Colorado to go to school."[100] Father did not intend to relocate her

[95]Tr. 20-21, 36-37, 44-45.

[96]Tr. 21.

[97]Tr. 45.

[98]Tr. 21.

[99]Tr. 59.

[100]Tr. 57.

residence.[101]

[101]Tr. 22.

Both proposed giving the other parent time with Kaitlyn in the summer,[102] but their proposals were considerably different. Father said that Kaitlyn should spend as much time with Mother as possible, since "a child should have both parents in their lives."[103] He therefore proposed to give Mother 10 weeks in the summer, with Father to have the weekends.[104] Mother likewise said that she wants Father to have frequent and continuing visitation with Kaitlyn,[105] but she proposed to give him only three 2-week periods during the summer.[106]

C. *The judgment.*

The day of the trial, Judge Czamanske made a docket

[102]Tr. 22, 47-48.

[103]Tr. 23-24.

[104]Tr. 22; Pet. Ex. 2.

[105]Tr. 43, 48.

[106]L.F. 55-56; Resp. Ex. F.

entry indicating the gist of his ruling.[107] He designated Mother's attorney "to prepare the appropriate Judgment."[108] Subsequently he entered the formal judgment.[109]

The docket entry stated:

> After consideration, the Court finds the § 452.375.2 RSMo factors to be equal for both parents, except the interaction and interrelationships of the child with parents and others favors the mother; and further, the mother is able and willing to perform her functions for the needs of the child. The mother's parenting plan is approved unless otherwise noted

[107] L.F. 5, 43.

[108] L.F. 43.

[109] L.F. 5, 44-49.

herein; her address shall be the address of the child for mailing and educational purposes.[110]

[110]L.F. 43.

The judgment, however, says nothing about any of the factors set forth in § 452.375.2. In the judgment, Judge Czamanske found only that "the best interests of said children [*sic*] will be served by granting the care, custody, and control jointly" to Father and Mother.[111] He incorporated Mother's proposed parenting plan as part of the judgment.[112] Specifically, in the judgment Judge Czamanske designated Mother's address "as the mailing address of the minor children [*sic*] for mailing and educational purposes,"[113] while in the incorporated parenting plan he stated that "MOTHER'S address is to be used for health and

[111]L.F. 45.

[112]L.F. 45, 47, 50.

[113]L.F. 47.

education purposes for such child."[114]

D. ***Father's post-trial motion.***

[114]L.F. 51.

Father filed timely motions to set aside the judgment, to reconsider, and for new trial.[115] First, he pointed out that § 478.240.2 authorizes the presiding judge to assign judges to cases but that the presiding judge never assigned Judge Czamanske to this case.[116] Father thus asked the court "to set aside the order/judgment entered by Judge Czamanske because there was no assignment by the presiding judge as required, therefore making the assignment of this matter defective and deficient."[117] Second, Father argued that the custody determination was against the weight of the evidence, pointing out the testimony relating to Mother's intention to relocate Kaitlyn's residence to Colorado and Father's intention not to relocate her residence; Mother's admission of mental problems during the marriage; the parental kidnapping charges against Mother and her denial of visitation; and Father's lack of denial of

[115]L.F. 65.

[116]L.F. 65.

[117]L.F. 65.

visitation.[118] Father also argued that Mother had "circumvented the requirements for relocation as set forth in RSMo 452.377, and that there was no finding that relocation of the minor child was in the best interest of the minor child."[119]

Judge Blankenship, to whom the presiding judge had assigned the case, heard the motion.[120] After "careful consideration," he denied it.[121]

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[118]L.F. 66-67.

[119]L.F. 67.

[120]L.F. 6.

[121]L.F. 6.

E. ***The appeal, and the Southern District's decision.***

Father then filed a timely notice of appeal.[122]

[122]L.F. 68.

The Southern District affirmed. By a 2-1 vote, it held that this Court's transfer order "clothed" Judge Czamanske "with the authority to hear this dissolution in the 39th judicial circuit" because this Court had transferred him "to sit in the 39th judicial circuit" and because "it was in the 39th judicial circuit that he presided over" this case.[123] Judge Garrison disagreed because of the "restriction" in this Court's order providing that Judge Czamanske's "power was 'confined to designated

[123]Buchanan v. Buchanan, SD26049, slip op. at 6 (Mo. App., S.D., Feb. 25, 2005) (majority opinion).

matters and cases.’”[124] All three judges however, concluded that the jurisdictional issue was waived for lack of objection before trial.[125]

[124] ***Id.,*** slip op. at 1-2 (Garrison, J., concurring in part and dissenting in part).

[125] ***Id.,*** slip op. at 5-6 (majority opinion); ***id.,*** slip op. at 3-4 (Garrison, J., concurring in part and dissenting in part).

By a 2-1 vote, the Southern District also held findings of fact unnecessary under § 452.375.6 because the parties disagreed only on the details of the parenting plan—where the child's residence would be for purposes of education—and not on the joint custody arrangement itself.[126] It relied on the Western District's decision in *Simon-Harris v. Harris.*[127]

[126]*Id.,* slip op. at 6-7 (majority opinion).

[127]138 S.W.3d 170, 178 (Mo. App. 2004).

POINTS RELIED ON

I

The trial court erred by entering the judgment altogether, because Judge Czamanske had no jurisdiction to hear and determine the case, and consequently the judgment is void, in that

(A) Judge Czamanske temporarily became a judge of the 39th Judicial Circuit only by virtue of this Court's order assigning him as a judge of that circuit;

(B) the order transferring Judge Czamanske specifically "confined" his "powers and responsibilities" to "designated matters and cases";

(C) the authority to designate such matters and cases rests with this Court under Mo. Const. art. V, § 6, and Rule 11.01, and otherwise with the presiding judge of the circuit under § 478.240; and

(D) neither this Court nor the presiding judge designated Judge Czamanske to hear and determine this case.

Ætna Ins. Co. v. O'Malley, 342 Mo. 800, 118 S.W.2d 3 (banc 1938).

Ballew Lumber & Hardware Co. v. Missouri Pac. Ry., 288 Mo. 473,

232 S.W. 1015, (1921)

Gray v. Clement, 296 Mo. 497, 246 S.W. 940 (1922).

State ex rel. Lambert v. Flynn, 348 Mo. 525, 154 S.W.2d 52 (banc 1941).

Mo. CONST. art. V, § 6,

§ 478.220, RSMo 2000.

§ 478.240, RSMo 2000.

Rule 11.01.

II

Alternatively to Point I above, the trial court erred by entering judgment designating Mother's address as the child's mailing address for "educational purposes," because the trial court erroneously applied the law, in that in its judgment the court failed to make the findings required by § 452.375.6 detailing the specific relevant factors that made that arrangement in the best interest of the child.

Morse v. Morse, 80 S.W.3d 898 (Mo. App. 2002).

Sleater v. Sleater, 42 S.W.3d 821 (Mo. App. 2001).

Speer v. Colon, 155 S.W.3d 60 (Mo. banc 2005).

§ 452.375, RSMo 2000.

Rule 74.04.

ARGUMENT

I

The trial court erred by entering the judgment altogether, because Judge Czamanske had no jurisdiction to hear and determine the case, and consequently the judgment is void, in that

(E) Judge Czamanske temporarily became a judge of the 39th Judicial Circuit only by virtue of this Court's order assigning him as a judge of that circuit;

(F) the order transferring Judge Czamanske specifically "confined" his "powers and responsibilities" to "designated matters and cases";

(G) the authority to designate such matters and cases rests with this Court under Mo. Const. art. V, § 6, and Rule 11.01, and otherwise with the presiding judge of the circuit under § 478.240; and

(H) neither this Court nor the presiding judge designated Judge Czamanske to hear and determine this case.

A. *Standard of review.*

Whether jurisdiction exists is a question of law that this Court can review *de novo.*[128] Even if jurisdiction is not raised in the trial court, as it was here,[129] jurisdictional claims may be raised for the first time on appeal.[130]

B. *The power of a transferred judge.*

[128]Ruestman v. Ruestman, 111 S.W.3d 464, 477 (Mo. App. 2003).

[129]L.F. 65.

[130]State v. Williams, 46 S.W.3d 35, 37-38 (Mo. App. 2001).

The Missouri Constitution provides for "circuit courts," in the plural.[131] Circuit and associate circuit judges may hear and determine cases and matters "within the jurisdiction of ***their*** circuit courts."[132] A judge of one circuit thus has no ***inherent*** jurisdiction to hear and determine cases in another circuit.[133] A judge may, though, ***acquire*** temporary jurisdiction to act outside of his or her circuit by virtue of one of two constitutional provisions.[134] The one pertinent here allows this Court to "make temporary transfers of judicial personnel from one court or district to another as the administration of

[131]MO. CONST. art. V, § 1.

[132]§ 478.220 (emphasis added).

[133]*See* State v. Meeks, 635 S.W.2d 14, 16 (Mo. banc 1982) (judge had to have a transfer order from this Court to "extend[his] judicial authority to include the right to hold a hearing in a courtroom outside" of his circuit).

[134]MO. CONST. art. V, §§ 6, 15.1.

justice requires."[135]

Once transferred by this Court,[136] a judge in effect temporarily becomes a judge of the other circuit with "the same powers and responsibilities" as a judge of that circuit.[137] But the judge's authority extends only as far as this Court authorizes, since constitutionally the judge becomes a judge of the other circuit only by virtue of the transfer order. Beyond that, the judge is subject to the presiding circuit judge's general administrative authority

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[135]*Id.* § 6.

[136]*Id.*; Rule 11.01.

[137]Rule 11.02.

over all judicial personnel in the circuit.[138]

C. *Judge Czamanske had no power to hear and determine this case.*

[138] § 478.240.2.

This Court did not assign Judge Czamanske to hear this particular case.[139] Instead it generally transferred him to the 39th Judicial Circuit (Stone County) for the period of September 15-19, 2003.[140]

If this Court had simply transferred Judge Czamanske, without more, conceivably he would have had the power to hear this case, because the transfer would have given him "the same powers and responsibilities" as a judge of the 39th Judicial Circuit,[141] including the power to "hear and determine *all* cases and matters within the jurisdiction" of

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[139]*Cf.* State v. Cella, 32 S.W.3d 114, 119 (Mo. banc 2000) (this Court assigned judge to hear the case pursuant to an order signed by the Chief Justice); State v. Mason, 95 S.W.3d 206, 212 (Mo. App. 2003) (this Court assigned senior judge to case); State v. Tackett, 12 S.W.3d 332, 335 (Mo. App. 2000) (this Court assigned a judge from 7th Judicial Circuit to a case pending in Lafayette County, which is in the 15th Judicial Circuit).

[140]L.F. 42.

[141]Rule 11.02.

that circuit.[142] But the order did not stop there. Instead, this Court expressly limited Judge Czamanske's authority, stating that his "powers and responsibilities shall be *confined* to *designated* matters and cases."[143]

[142] § 478.220 (emphasis added).

[143] L.F. 42 (emphasis added).

Since this Court designated no particular matter or case, the task of doing so fell to the presiding judge of the circuit, who by statute had the authority "to assign judges to hear such cases or classes of cases as the presiding judge may designate."[144] But the presiding judge, Judge J. Edward Sweeney, did not assign the case to Judge Czamanske, either. Instead, some eight months before this Court transferred Judge Czamanske to Stone County, he assigned this case to Judge Alan Blankenship, a Stone County associate circuit judge.[145]

On August 11, 2003, Judge Blankenship set the case for trial on September 18, 2003.[146] Since 10 days earlier this Court had entered its order transferring Judge Czamanske to Stone County for the week of September 15-19, 2003,[147] Judge Blankenship noted in his docket entry that the case "*may* be

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[144]§ 478.240.2.

[145]L.F. 5.

[146]L.F. 5.

[147]L.F. 42.

heard by visiting judge Daniel M. Czamanske."[148]

For three reasons, Judge Blankenship's docket entry did not give Judge Czamanske the power to hear and determine this case:

- First, even if he had had the authority to do so, Judge Blankenship did not purport to assign the case to Judge Czamanske. His statement that the case "*may* be heard" by Judge Czamanske was either speculative (the case *might* be heard by Judge Czamanske) or permissive (Judge Czamanske would be *allowed* to hear the case). Either way, it was not a directive purporting to assign Judge Czamanske to hear and determine the case.

[148]L.F. 5 (emphasis added).

- Second, Judge Blankenship had no statutory assignment authority. Under § 478.240.2, only the presiding judge has that authority. Judge Sweeney is the presiding judge.[149] As an associate circuit judge, Judge Blankenship could not be the presiding judge, who must instead be a circuit judge.[150]

[149]L.F. 5.

[150]§ 478.240.1.

- Third, Judge Blankenship had no assignment authority under the local rules. As Judge Garrison noted in the Southern District,[151] the version of local Rule 4.2 in effect at the time this case was tried provided that certain classes of cases would be heard exclusively by associate circuit judges, on the record, "subject to other assignment as may be provided by statute, Supreme Court Rule or order of the circuit judge," but the designated classes of cases did not encompass dissolution of marriage cases under Chapter 452.[152]

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[151]Buchanan v. Buchanan, SD26049, slip op. at 3 (Mo. App., S.D., Feb. 25, 2005) (Garrison, J., concurring in part and dissenting in part).

[152]39th Cir. R. 4.2 (2003) (superseded) (App. A30). Father notes this recognizing that Missouri courts have held that they cannot take judicial notice of a local rule that was not made a part of the record. *E.g.*, Robinson v. Lohman, 949 S.W.2d 907, 913 (Mo. App. 1997). Mother relied on the local rules in her brief in the Court of Appeals, however, and Judge Garrison questioned whether the rule against judicial

Because this Court confined Judge Czamanske's "powers and responsibilities" in Stone County to "*designated* matters and cases,"[153] and because neither this Court nor the presiding judge designated Judge Czamanske to hear this case, Judge Czamanske had no power under this Court's transfer order to hear and determine this case.

D. *The Southern District wrote the limiting language out of this Court's order.*

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notice remains viable now that local rules must be filed in this Court.

[153]L.F. 42 (emphasis added).

If this Court had intended to give Judge Czamanske blanket authority to hear any case in Stone County, its order would have ended with the language transferring him there. So the limitation on his authority to "designated matters and cases" had to mean *something.* This Court does not use meaningless words in its rules,[154] and neither does it use meaningless words in its orders. By holding that Judge Czamanske had jurisdiction simply because this Court transferred him to the 39th Judicial Circuit, the Southern District majority wrote the limiting language out of this Court's order.

The cases that the majority cited, *Kansas City v.*

[154]State *ex rel.* Missouri Pac. R.R. v. Koehr, 853 S.W.2d 925, 926-27 (Mo. banc 1993).

Rule[155] and *Lansing v. Lansing,*[156] are inapposite.

[155]673 S.W.2d 21 (Mo. banc 1984).

[156]736 S.W.2d 554 (Mo. App. 1987).

Rule did not even involve this Court's assignment. The issue was whether an associate circuit judge who heard an appeal from the municipal division had jurisdiction under a local Jackson County order that generally assigned municipal appeals to the associate division but did not assign any particular judge.[157] This Court held that the judge had jurisdiction because § 478.240.2 grants the presiding circuit judge to assign any judicial personnel "to hear such cases or classes of cases as the presiding judge may designate."[158]

[157] *Rule,* 673 S.W.2d at 22-23.

[158] *Id.* at 23-24.

As Judge Garrison noted in the Southern District, *Lansing* does not indicate that this Court "placed any restrictions on that assignment as it did in this case."[159] Furthermore, and just as importantly, this Court transferred the judge in *Lansing* to handle business in a particular division of the transferee court, and the visiting judge "was sitting in the place of" the regular judge of that division.[160] Here there was no assignment to any particular division and no evidence that Judge Czamanske sat in place of Judge Blankenship—or that Judge Blankenship was even absent. Without explanation, the Southern District majority found no "legal significance" in this difference.[161] But while it makes perfect sense for

[159]Buchanan v. Buchanan, SD26049, slip op. at 2 (Mo. App., S.D., Feb. 25, 2005) (Garrison, J., concurring in part and dissenting in part).

[160]*Lansing,* 736 S.W.2d at 556.

[161]Buchanan v. Buchanan, SD26049, slip op. at 5 (Mo. App., S.D., Feb. 25, 2005) (majority opinion).

this Court to assign a judge to a particular division to substitute for and hear cases that would otherwise come before the regular judge, as in ***Lansing,*** it makes no sense that this Court would give Judge Czamanske a commission to rove throughout the 39th Judicial Circuit and interlope in any case he desired—including cases being heard by the presiding circuit judge himself.

E. *Judge Czamanske's lack of power is jurisdictional.*

This issue goes directly to Judge Czamanske's jurisdiction itself. That is because a judge lacks inherent jurisdiction outside of his or her circuit and acquires jurisdiction only in accordance with the terms of the transfer order.

A court must have the authority to render a particular judgment in a particular case before it can be said to have jurisdiction.[162] This Court long ago said that

> more than a general jurisdiction of a class is necessary to authorize the court to hear and determine

[162] Ætna Ins. Co. v. O'Malley, 342 Mo. 800, 118 S.W.2d 3, 10 (banc 1938). *See also* Chuning v. Calvert, 452 S.W.2d 580, 585 (Mo. App. 1970).

the case. By this we mean that, while a court may have jurisdiction of the subject-matter of a class of suits, it does not necessarily follow that it may hear and determine the particular case submitted for its consideration. This right may be and is oftentimes dependent upon other matters, the determination of which is necessary before the court's right to adjudicate the issue involved can be definitely ascertained.[163]

[163]Ballew Lumber & Hardware Co. v. Missouri Pac. Ry., 288 Mo. 473, 232 S.W. 1015, 1016 (1921).

Jurisdiction to render a particular judgment in a particular case depends upon the power of the court granted by statute or otherwise[164]—such as, in this case, this Court's order transferring Judge Czamanske to the 39th Judicial Circuit. If the court cannot try a question except under particular conditions, it has no jurisdiction until those conditions exist.[165]

The condition that had to exist for Judge Czamanske to have jurisdiction to act in this case was the designation of this case, by either this Court or the presiding circuit judge, as one that he was supposed to hear. That never occurred. Hence Judge Czamanske acquired no jurisdiction in this case.

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[164]State *ex rel*. Lambert v. Flynn, 348 Mo. 525, 154 S.W.2d 52, 57 (banc 1941); State *ex rel.* Robinson v. Crouch, 616 S.W.2d 587, 592 (Mo. App. 1981).

[165]*Flynn*, 154 S.W.2d at 57; *Crouch*, 616 S.W.2d at 592.

F. *Because Judge Czamanske lacked jurisdiction, the judgment is void.*

"One form of usurpation of power on the part of a court rendering a judgment is where it attempts to disregard limitations prescribed by law restricting its jurisdiction."[166] That is precisely what happened here. This Court's transfer order restricted Judge Czamanske's power to act. Judge Czamanske disregarded that limitation by purporting to hear and decide a case that he was never designated to hear.

"Even where a court has jurisdiction over the parties and the subject-matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void."[167] Because Judge Czamanske lacked jurisdiction to decide this case, then, the judgment is void.

As an aside, this Court need not worry that reversal

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[166]Gray v. Clement, 296 Mo. 497, 246 S.W. 940, 943 (1922).

[167]Ætna Ins. Co. v. O'Malley, 342 Mo. 800, 118 S.W.2d 3, 10 (banc 1938).

here might destabilize judgments—long since final—entered by transferred judges who were never assigned to the cases giving rise to them. If the parties in those cases have acquiesced in those judgments, accepting their benefits and burdens, they are estopped to attack them now, even if those judgments would otherwise be void.[168]

G. *Father did not waive the jurisdictional issue.*

Here, of course, Father has not acquiesced in the judgment but has attacked its validity directly on this appeal. Despite the Southern District's conclusion, Father did not otherwise waive the jurisdictional issue.

[168]State *ex rel.* York v. Daugherty, 969 S.W.2d 223, 225 (Mo. banc 1998).

Since the jurisdiction of a judge to act outside of his or her own circuit derives from this Court's constitutional authority to transfer judges, it goes not "to the personal privilege of the litigant" but to the power of the court itself "under a public policy established by statute or otherwise."[169] As such, "it cannot be waived."[170]

The cases that the Southern District majority cited in support of its holding that Father waived the jurisdictional issue involved judges who acted within their own circuits, where they had inherent authority. One other case, which Judge Garrison cited, gives no guidance on this issue because it does not explain how the judge there was assigned to that case. The reliance on these cases shows that the Southern District misinterpreted the issue with

[169]State *ex rel.* Lambert v. Flynn, 348 Mo. 525, 154 S.W.2d 52, 57 (banc 1941).

[170]*Id.*

respect to the source of Judge Czamanske's jurisdiction as a transferred judge in the first place.

The two principal cases are ***In re Estate of Mapes***[171] and ***In re Marriage of Pierce.***[172] In ***Mapes,*** as the Southern District majority even noted,[173] the court said that the trial judge "would have had de facto authority since he was ***a duly qualified judge of the circuit in question*** and purported to act under assignment of the presiding judge."[174] In ***Pierce,*** the case was heard in Howell County by Judge Dunlap,[175] a judge of the 37th Judicial Circuit[176] comprising

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[171]817 S.W.2d 545 (Mo. App. 1991).

[172]867 S.W.2d 237 (Mo. App. 1993).

[173]Buchanan v. Buchanan, No. SD26049, slip op. at 5 (Mo. App., S.D., Feb. 25, 2005) (majority opinion).

[174]*Mapes*, 817 S.W.2d at 547 (emphasis added).

[175]*Id.* at 238.

[176]STATE OF MISSOURI, 1993-1994 OFFICIAL MANUAL 283.

Carter, Howell, Oregon, and Shannon Counties.[177] The court said that the "plain and clear language of § 478.220," which authorizes circuit judges and associate circuit judges to "hear and determine all cases and matters within the jurisdiction of their circuit court[s]," gave Judge Dunlap "jurisdiction to 'hear and determine all cases and matters within the jurisdiction' of the Circuit Court of Howell County."[178]

[177] § 478.167, RSMo 2000.

[178] *Pierce*, 867 S.W.2d at 238.

The two other cases that the Southern District majority cited similarly involved judges acting in their own circuits. In *Holly v. State,*[179] the case was heard in McDonald County by Judge Stremel,[180] a judge of the 40th Judicial Circuit[181] comprising Newton and McDonald Counties.[182] In *State ex rel. McNaul v. Bonacker,*[183] the case was heard in Greene County by Judge Bonacker,[184] a judge of the 31st Judicial Circuit[185] comprising Greene

[179]924 S.W.2d 868 (Mo. App. 1996).

[180]*Id.* at 868 (synopsis).

[181]STATE OF MISSOURI, 1995-1996 OFFICIAL MANUAL 278.

[182]§ 478.175, RSMo 2000.

[183]711 S.W.2d 566 (Mo. App. 1986).

[184]*Id.* at 566 (synopsis).

[185]STATE OF MISSOURI, 1985-1986 OFFICIAL MANUAL 253. *See also McNaul,* 711 S.W.2d at 568 (Judge Bonacker was "the judge of Division 3").

County.[186] In *State ex rel. M.D.K. v. Dolan,*[187] the case was heard in St. Louis County by Judge Dolan,[188] a judge of the 21st Judicial Circuit[189] comprising St. Louis County.[190]

[186]§ 478.153, RSMo 2000.

[187]968 S.W.2d 740 (Mo. App. 1998).

[188]*Id.* at 740 (synopsis).

[189]STATE OF MISSOURI, 1997-1998 OFFICIAL MANUAL 270.

[190]§ 478.127, RSMo 2000.

The one exception is *Cooper v. Bluff City Mobile Home Sales, Inc.*,[191] which Judge Garrison cited, but nonetheless *Cooper* is not authority for a waiver here. *Cooper* was heard by Judge Rader, whom the case synopsis describes as a senior judge.[192] Judge Rader was a circuit judge from the 32nd Judicial Circuit,[193] comprising Perry, Bollinger, and Cape Girardeau Counties,[194] while the case was heard in Butler County, which is in the 36th Judicial Circuit.[195] *Cooper* does not say how Judge Rader was assigned to the case. Assuming, though, that as a senior judge he was assigned by an order of this Court, there is no indication in *Cooper* whether this Court assigned him (a) to that particular case, (b) to the 36th Judicial Circuit

[191]78 S.W.3d 157 (Mo. App. 2002).

[192]*Id.* at 158 (synopsis).

[193]STATE OF MISSOURI, 1987-1988 OFFICIAL MANUAL 272.

[194]§ 478.155, RSMo 2000.

[195]*Id.* § 478.165.

generally, or (c) to the 36th Judicial Circuit with powers and responsibilities limited, as here, to "designated cases and matters." Nor does *Cooper* say whether the presiding circuit judge entered an order assigning him to that case. *Cooper* thus gives absolutely no guidance for determining the issue in this case.

Since the judges in *Mapes, Pierce, Holly, McNaul,* and *M.D.K.* all acted within their own circuits, where they had inherent authority, and since *Cooper* says nothing about the judge's appointment there, the discussion by both the Southern District majority and Judge Garrison of those cases shows that the Southern District misinterpreted the basis for Judge Czamanske's *acquired* jurisdiction in the first place.

H. *The judgment must be vacated or reversed.*

Since the judgment is void, it cannot stand. This Court should either vacate or reverse it and should remand the case to the circuit court for further proceedings.

II

Alternatively to Point I above, the trial court erred by entering judgment designating Mother's address as the child's mailing address for "educational purposes," because the trial court erroneously applied the law, in that in its judgment the court failed to make the findings required by § 452.375.6 detailing the specific relevant factors that made that arrangement in the best interest of the child.

The lawyers told Judge Czamanske that the only contested issue in this case is "the residence for the minor child."[196] The parties agreed on splitting parenting time equally until Kaitlyn reaches school age. Once she is old enough to attend school, though, exchanging her every three weeks will be unworkable. The practical issue, then, is where Kaitlyn will live when she attends school.

The court designed Mother's address as Kaitlyn's address for educational purposes. But nowhere in the judgment did Judge Czamanske make the findings required by § 452.375.6 to detail the specific relevant factors that

[196]Tr. 2.

make his custody arrangement in Kaitlyn's best interest. Because of the absence of those findings, the judgment must be reversed.

A. *Standard of review.*

The standard of review in a court tried case is governed by *Murphy v. Carron*.[197] This Court must reverse the judgment if it is unsupported by the evidence or against the weight of the evidence, or if it erroneously declares or applies the law.[198] This standard applies in custody cases in which, as here, a party argues that the trial court failed to make required findings under § 452.375.6.[199]

B. *The requirement that the court identify the relevant factors underlying the decision.*

Section 452.375 sets out eight nonexclusive factors that the trial court must consider when making a child custody determination. It states:

> 2. The court shall determine custody in accordance with the best interests of the child. The court shall

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[197]536 S.W.3d 30 (Mo. banc 1976).

[198]*Id.* at 32.

[199]Capehart v. Capehart, 110 S.W.3d 920, 923 (Mo. App. 2003).

consider all relevant factors including:

(1) The wishes of the child's parents as to custody and the proposed parenting plan submitted by both parties;

(2) The needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child;

(3) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests;

(4) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent;

(5) The child's adjustment to the child's home, school, and community;

(6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the court finds that a pattern of domestic violence has occurred, and, if

> the court also finds that awarding custody to the abusive parent is in the best interest of the child, then the court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child and any other child or children for whom the parent has custodial or visitation rights, and the parent or other family or household member who is the victim of domestic violence from any further harm;
>
> (7) The intention of either parent to relocate the principal residence of the child; and
>
> (8) The wishes of a child as to the child's custodian.[200]

The section then provides that if the parents disagree over custody issues, the court must detail the factual bases for its determination that its custody arrangement is in the child's best interest. It states:

> If the parties have not agreed to a custodial arrangement, or the court determines such arrangement

[200] § 452.375.2.

is not in the best interest of the child, *the court shall include a written finding in the judgment or order based on the public policy in subsection 4 of this section and each of the factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific relevant factors that made a particular arrangement in the best interest of the child.* If a proposed custodial arrangement is rejected by the court, the court shall include a written finding in the judgment or order detailing the specific relevant factors resulting in the rejection of such arrangement.[201]

C. ***The parties did not agree to a custody arrangement.***

[201] § 452.375.6 (emphasis added).

The parties did not agree to a custodial arrangement. Their proposed parenting plans were different. Granted, both Mother[202] and Father[203] suggested that the court award joint legal and physical custody. Beyond that, the plans differed. Insofar as is pertinent here, Mother's amended parenting plan stated that Kaitlyn would "attend school in district [where] mother resides."[204] Father's amended plan stated that Kaitlyn "shall attend school in the district and at the neighborhood school where Father resides"[205] and that "Father's residence shall be the address of Minor child for mailing and educational purposes."[206] It specifically referred to the "Shell Knob . . . school year."[207]

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[202]Def. Ex. F, at 2.

[203]Pet. Ex. 2, at 1.

[204]Def. Ex. F, at 4.

[205]Pet. Ex. 2, at 3.

[206]Pet. Ex. 2, at 7.

[207]Pet. Ex. 2, at 7.

D. *The judgment made none of the required findings.*

The judgment, however, is devoid of any findings under § 452.375.6. Indeed, it does not even say—as trial courts have become adept at saying—that Judge Czamanske considered "all relevant factors, including" the eight specific factors that appear in § 452.375.2.

Judge Czamanske's docket entry purported to make certain factual findings with respect to the factors outlined in § 452.375.2. But for two reasons that does not satisfy the findings requirement of § 452.375.6.

First, the docket entry itself is not the judgment. That is particularly true here because Judge Czamanske directed Mother's attorney "to prepare the appropriate Judgment,"[208] hence emphatically making the docket entry *not* a judgment.[209] Section 452.375.6 requires that the findings appear in the judgment or order, meaning an order of modification. And, of course, under Rule 74.04(a) even an

[208]L.F. 43.

[209]Rule 74.04(a).

order must be denominated "judgment or decree." So the docket entry does not supply the deficiency in the judgment itself.[210]

[210] *See also* Morse v. Morse, 80 S.W.3d 898, 904 n.1 (Mo. App. 2002) (findings in separate memorandum did not satisfy the statute because "such written findings must be included in the judgment itself").

Second, it is unclear from the docket entry just what Judge Czamanske intended to do. The docket entry states that "mother's parenting plan is approved."[211] But Mother proposed two different parenting plans, one of which the court ultimately adopted in the judgment[212] and another, an amended parenting plan, that Mother proffered as an exhibit at trial.[213]

The transcript is filled with testimony bearing on virtually all of the factors listed in § 452.375.2. There was plenty of evidence from which Judge Czamanske could have made copious findings, but he did not do so. Obviously he considered doing so, because his docket entry mentions the statute. But the judgment itself says nothing.

Because the parties did not agree on a custody arrangement, the court necessarily rejected "a proposed

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[211]L.F. 43.

[212]L.F. 50.

[213]Tr. 44-45; Def. Ex. F.

custodial arrangement."[214] Indeed, the court rejected two proposed custodial arrangements: It rejected one of Mother's plans in favor of another, and by adopting one of Mother's plans the court necessarily rejected Father's parenting plan. Thus, even if Judge Czamanske somehow had jurisdiction, § 452.375.6 mandates reversal.

E. ***The findings requirement should apply here.***

[214] § 452.375.6.

The Southern District majority relied on ***Simon-Harris v. Harris,***[215] a Western District decision, as authority for holding that § 452.375.6 does not mandate written findings of fact when the parties have "agreed to a custody arrangement, but not to a parenting plan."[216] Both this decision and ***Harris*** conflict with the Eastern District's ruling in ***Sleater v. Sleater.***[217]

In ***Sleater*** the parties agreed to, and the trial court awarded, joint legal and physical custody.[218] In ***Sleater,*** then, the court awarded precisely the custody arrangement that the parties sought, if the Southern District majority's narrow definition of "custody arrangement" here is correct. But it "did not include the parties' agreement in the

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[215]138 S.W.3d 170 (Mo. App. 2004).

[216]Buchanan v. Buchanan, SD26049, slip op. at 7 (Mo. App., S.D., Feb. 25, 2005) (majority opinion).

[217]42 S.W.3d 821 (Mo. App. 2001).

[218]***Id.*** at 823.

decree," opting instead to fashion its own *details* for which party had the children when.[219] The Eastern District reversed because the court failed to make the findings that § 452.375.6 requires, indicating that the parenting plan fell within the ambit of "custody arrangement" under the statute.[220]

While parties may agree *conceptually* on the type of custody—joint physical custody, for example—they often disagree on what that means *in practice* because they disagree on the details. Yet the details are what most affect the child. That is why the statute requires that the court justify its ruling by detailing the factors that support it. It frustrates the purpose of requiring trial courts to make written findings to facilitate appellate review if "custodial arrangement" is defined as narrowly as

[219] *Id.*

[220] *Id.* at 823-24.

the Southern District defined it here.

In *Speer v. Colon,*[221] this Court made short work of five separate opinions from the Southern District's seven judges by stating, simply and emphatically, that § 452.375.6 requires "a ***written finding . . .*** detailing the specific relevant factors that made the chosen arrangement in the best interest of the [child]."[222] *Speer* effectuates the legislative intent that trial courts explain their reasoning when a child's living circumstances are involved. It frustrates the legislative intent to split hairs as the Southern District did here and as the Western District appeared to do in *Simon-Harris v. Harris*—divorcing a custody arrangement from the details of the parenting plan that puts it into effect. As a matter of policy, the Eastern District was right in *Sleater,* and this Court

[221]155 S.W.3d 60 (Mo. banc 2005).

[222]*Id.* at 61.

should say so.

CONCLUSION

Judge Czamanske had no jurisdiction to hear and determine this case. As a judge of another circuit, he had jurisdiction to act in the 39th Judicial Circuit only because of this Court's order transferring him there. This Court specifically limited his power, however, to "designated matters and cases." Since this Court did not designate him to hear this case, the power to do so rested solely with the presiding judge of the circuit. But the presiding judge did not designate this case for Judge Czamanske to hear, either. In view of the limitation in the transfer order, therefore, Judge Czamanske had no jurisdiction. The judgment must be vacated or reversed.

Even if he had jurisdiction, the judgment must still be reversed because it contains none of the findings required by § 452.375.6.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06

I certify the following:

1. The foregoing Brief complies with the type and volume limitation of Rule 84.06. The typefaces are Century 725 BT and Arial.

2. The signature block of the foregoing Brief contains the information required by Rule 55.03(a). To the extent that Rule 84.06(c)(1) may require inclusion of the representations appearing in Rule 55.03(b), those representations are incorporated herein by reference.

3. The foregoing Brief, excluding the cover, certificate of service, this certificate, and the signature block, contains 9,300 words as counted by Word Perfect 9.

4. Microsoft Word format is unavailable to the undersigned for preparation of this Brief. This Brief has been prepared using Word Perfect 9 for Windows.

5. The disk submitted herewith as required by Rule 84.06(g) has been scanned for viruses and is virus free.

Richard L. Schnake, # 30607

CERTIFICATE OF SERVICE

I certify that I served one copy of this Appellant's Brief in the form specified by Rule 84.06 and one copy of the disk required by Rule 84.06(g) on Mr. Douglas C. Fredrick, counsel for Respondent, by mailing them to him at his address of record, on April 22, 2005.

_____

Richard L. Schnake, # 30607